BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
WEST MISSOURI POWER COMPANY)

Appearances:

For Appellant: W. E. Baird, Certified Public Accountant

For Respondent: Burl D. Lack, Chief Counsel; Hebard P. Smith, Associate Counsel

OPINION ON REHEARING

In its petition for rehearing from our decision sustaining the action of the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) on the protest of the West Missouri Power Company to a proposed assessment of additional tax in the amount of $2,717.46, the tax having been redetermined in the amount of $911.76, for the taxable year 1941, the Appellant reiterates its contention that it was not doing business in California in 1941 and considerably elaborates its argument as to the impropriety of measuring its 1941 tax by its 1940 income if it be held to have been doing business in 1941.

The facts respecting Appellant's operations in 1940 and 1941 are set forth in our prior opinion and need not be repeated here. While Appellant's 1941 operations in this State were undoubtedly very limited, we remain of the view that they were sufficient to constitute the doing of business here within the meaning of Section 5 of the Bank and Corporation Franchise Tax Act (now Section 23101 of the Revenue and Taxation Code) as construed by the California Supreme Court in Golden State Theatre and Realty Corporation v. Johnson, 21 Cal. 2d 493; see also Carson Estate Co. v McColgan, 21 Cal. 2d 516.

Appellant's objection to the use of its 1940 income as the measure of its 1941 tax liability stems from the fact that its activities in this State in the latter year were greatly reduced below those of the

former. It contends, in this connection, that the tax imposed upon it for 1941 should be commensurate with the limited business conducted in California that year and that the 1940 income of the business removed from this State or discontinued in 1940 should not be used as the measure of the 1941 tax liability for the remaining business. As we have already pointed out, however, the pertinent provisions of the taxing statute offer no support whatever to this position, but rather require the employment of Appellant's entire 1940 income from sources in this State as the measure of its 1941 tax liability.

To establish the legislative intent it advances, considerable reliance is placed by Appellant on subdivisions (c), (d), (k) and (1) of Section 13 of the Act. Though this Section, to be sure, sets forth some departures from the principle that the California income of one year is the measure of the tax for the following year, its provisions are of no assistance to Appellant. Subdivisions (c) and (d), relating to corporations commencing to do business here, merely provide a method whereby the tax for a complete year shall be measured by an entire year's income. Subdivision (1) covers the situation of a corporation discontinuing doing business in the State, but not dissolving or withdrawing, and then resuming business here after the year following that in which it discontinued business. The rule of the subdivision that the tax for the taxable year in which business is resumed shall be measured by the income of the year in which business was discontinued can only be regarded as a declaration of policy that it is more realistic so to measure the tax in this special situation than to apply some other plan as that for commencing corporations.

It is on subdivision (k) that Appellant leans most heavily. It argues that the allowance of a refund to a corporation which dissolves or withdraws from the State of a portion of the tax paid for the year of dissolution or withdrawal indicates a legislative intent to measure its tax for 1941 by its income for 1940 from the California properties it continued to own and from which it derived rental income in 1941. A short answer to this contention is, of course, that while the legislature provided for certain departures from the basic rule of measuring the tax for one year by the income of the prior year, the Appellant's situation is not one of those for which the legislature has authorized special treatment. This fact, in itself, requires the rejection of the Appellant's posi-

tion. Our prior opinion cited Spring Valley Company, Ltd. v. Johnson, 7 Cal. App. 2d 258 which upheld the application of the franchise tax for a taxable year measured by the income of a prior year even though the corporation had sold all its operating assets and retired from active operations during the income year and continued to hold and administer only nonoperative assets with respect to which it suffered a loss in the taxable year. The Appellant seeks to distinguish this decision by pointing out that it related to the sale of an operating business, apparently by a domestic corporation, whereas the presant matter involved a sale of a local operating business and the withdrawal from the State of certain other income producing activity by a foreign corporation during the income year. We are not referred to. nor' do we find, anything in the tax act, however, requiring a conclusion herein differing from that of the Spring Valley decision,

ORDER ON REHEARING

Pursuant to the views expressed in the Opinion on Rehearing of the Board on file in this proceeding and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 25667 of the Revenue and Taxation Code, that none of the grounds set forth in the Petition for Rehearing filed by West Missouri Power Company from our order sustaining the action of the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) on the protest of said West Missouri Power Company to a proposed assessment of additional tax in the amount of $2,717.46, the tax having been redetermined in the amount of $911.76, for the taxable year 1941 constitutes cause for the granting thereof and, accordingly, it is ordered that said Petition be and the same is hereby denied and that the said order of this Board be and the same is hereby reaffirmed.

Done at-Sacramento, California, this 22d day of July, 1952, by the State B oard of Equalization.

J. L. Seawell, Chairman

Geo. R. Reilly, Member

J. H. Quinn, Member

Thomas H. Kuchel, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary